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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Sections 3(n) )  
and 332 of the Communications Act )  
 )  
Regulatory Treatment of )  
Mobile Services )

GN Docket No. 93-252

COMMENTS OF AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"), by its attorneys, hereby submits its comments on the Notice of Proposed Rule Making in the above captioned proceeding.<sup>1</sup> In implementing Title VI, Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993<sup>2</sup> ("Budget Act") to create a comprehensive system of regulation for mobile radio services, the Commission has issued tentative conclusions with respect to the future regulatory status of a number of existing wireless service offerings. As detailed below, ARINC fully supports the Commission's proposal to continue to treat aviation services provided pursuant to Part 87 of the Rules and ARINC's non-commercial shared private land mobile operations under Part 90 of the Rules as "private mobile services."

ARINC, the communications company of the air transport industry, is dedicated to serving the communications needs of

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<sup>1</sup> Notice of Proposed Rulemaking, GN Docket No. 93-252 (released Oct. 8, 1993) ("NPRM")

<sup>2</sup> Pub. L. No. 103-66, Title VI, § 6002(b), 107 stat. 312, 392 (1993).

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the airlines. Formed in 1929 to coordinate the use of available frequencies along the airways, ARINC is owned by the major air carriers and provides aeronautical radio communications throughout the United States and most of North America on a not-for-profit basis. These services include aeronautical mobile data service (ACARS) and air-ground voice. In addition, ARINC operates trunked 800 MHz and mobile systems<sup>3</sup> in the vicinity of major airports and conventional systems on frequencies set aside for aviation terminal use ("ATU").<sup>4</sup> ARINC operates these services on a traditional shared-use basis with the airlines and aviation support organizations.<sup>5</sup>

ARINC's radio services are currently classified as private, non-commercial mobile services. However, with the enactment of Title VI of the Budget Act, Congress has sought to establish a new regulatory framework to govern the offering of all mobile radio services. To this end, the Act requires the Commission to issue rules on the interpretation and application of the statutory definitions of "commercial mobile service" ("CMS") and "private mobile service."

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<sup>3</sup> See 47 C.F.R. Part 90, Subpart S.

<sup>4</sup> See 47 C.F.R. § 90.75(C)(25).

<sup>5</sup> See, Report and Order, Amendment of Part 87 to Clarify the Aeronautical Enroute Station Rules, PR Docket No. 80-243, 87 FCC 2d 382 (1981).

In the NPRM, the Commission has proposed to classify all existing private non-commercial mobile services as "private mobile services."<sup>6</sup> The FCC specifically proposes that aviation services under Part 87 of the Commission's rules would be included in that category. ARINC agrees that its aeronautical services should retain their non-commercial status under the new rules. The agency's proposed classification of these services is fully consistent with both the language and intent of the Budget Act and should be adopted.

The FCC is likewise correct in its tentative conclusion that the private status of non-commercial Part 90 systems should be maintained, although it has called for comment on the treatment of shared systems generally.<sup>7</sup> ARINC's land mobile operators clearly merit classification as private because they are not-for-profit, non-commercial shared systems, even though they may not be used for purposes internal to ARINC.<sup>8</sup> As shown below, no grounds exist for revisiting that issue here.

Under the Budget Act, a "private mobile service" is one that "is not a commercial mobile service or the functional equivalent of a commercial mobile service." A "commercial

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<sup>6</sup> NPRM, ¶ 35.

<sup>7</sup> See NPRM ¶¶ 13, 35.

<sup>8</sup> Cf. id.

mobile service," in turn, is one "that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public."<sup>9</sup> ARINC's radio services should be classified as "private mobile services" because they do not meet either of the principal statutory criteria for a CMS.

First, ARINC does not provide its services for profit. Rather, as a not-for-profit corporation, ARINC is merely a cost-sharing center for its owners to provide services necessary to the conduct of their business. The Commission has long recognized that such sharing arrangements merit private user status.<sup>10</sup>

The NPRM further suggests that the "for profit" element of the Budget Act was intended to distinguish between licensees who seek to provide services on a for-profit basis to customers, and those licensees who do not.<sup>11</sup> Thus, government services, non-profit public safety services, and business radio systems that are used solely for internal use would not be classified as "for profit."<sup>12</sup> ARINC's services

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<sup>9</sup> Pub. L. No. 103-166, Title VI, § 6002(b), 107 stat. 312 (1993).

<sup>10</sup> See Resale and Shared Use, 60 F.C.C.2d 261 (1976).

<sup>11</sup> NPRM, ¶ 11.

<sup>12</sup> See NPRM, ¶ 35.

allow the airlines and aviation operators, its primary owners, to provide safe and efficient air transport operations. As non-profit services performing, inter alia, public safety functions, ARINC's services do not meet the definition of a "commercial mobile service."

Additionally, ARINC's services do not satisfy the requirement that the interconnected service be made available "to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public." The NPRM suggests that this provision would be met by "any interconnected service that is offered to the public without restriction, as existing common carrier services are offered."<sup>13</sup> A service would be "effectively available" if it was available to a large sector of the public.

Under this interpretation, specialized services that are offered only to a limited user group would be exempt from common carrier regulation. ARINC does not make its services available to the public but instead serves only the airlines and other aircraft operators and supporting entities. Moreover, Part 87 limits the scope of many aviation services to communications related to safe and efficient air transport.<sup>14</sup>

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<sup>13</sup> NPRM, ¶ 23.

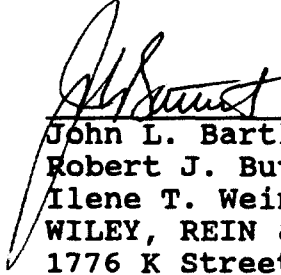
<sup>14</sup> See, e.g., 47 C.F.R. §§ 87.185, 87.213, 87.261, 87.299, 87.319, 87.371.

It would be both a legal and practical impossibility for these services to be made available to the public generally.

It follows that ARINC's radio services satisfy neither prong of the "commercial mobile service" definition. Its services are not provided for profit and are not available to the public. Accordingly, the Commission's proposal to continue to treat these services as "private mobile services" should be adopted in its final rules in this proceeding.

Respectfully submitted,  
AERONAUTICAL RADIO, INC.

By



John L. Bartlett  
Robert J. Butler  
Ilene T. Weinreich  
WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

Its Attorneys

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